

To: CN=Karen Schwinn/OU=R9/O=USEPA/C=US@EPA[]
Cc: []
From: CN=Bruce Herbold/OU=R9/O=USEPA/C=US
Sent: Thur 9/15/2011 4:32:22 PM
Subject: Re: X2

That is a remarkably succinct and cogent statement. I hope they hear it.

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From: Karen Schwinn/R9/USEPA/US
To: david_nawi@ios.doi.gov
Date: 09/14/2011 07:10 PM
Subject: X2

David -

I heard again on today's State-Federal BDCP call that the federal and state lead BDCP agencies are working on a process to enlist outside scientists to develop alternatives to Fall X2 that would have lower water costs. This concept also came up briefly at the State-Federal meeting last week. As you and I discussed after last week's meeting, as well as a number of times in the past (including last winter when we circulated our draft ANPR), we need to keep in mind the overlap between the ESA and CWA when it cost to X2 requirements.

Because this is of such keen interest to EPA, I want to re-cap our conversation and offer some elaboration. As you know, protecting the low salinity zone by managing "X2" has been a major Clean Water Act focus for us since the early 1990's. The Bay Delta Accord relied on spring X2 as its major estuary protection mechanism, and the State Board adopted that standard and its scientific rationale in its flow standards in the 1995 Water Quality Control Plan. At that time, DOI and NMFS both endorsed the X2 approach (which was no coincidence; through the Club FED effort, we had been working collaboratively on a single estuarine standard that would meet both ESA and CWA requirements). There have been multiple reviews of the X2 approach since then - the State Board's workshops in 2006, the 2009 Information Quality Act independent review, the 2010 NAS review, plus the ongoing review in Judge Wanger's court during the litigation over the delta smelt BO.

As you also know, the State Water Board plans to take up the subject of X2 in the context of considering amendments to their WQCP. They made this clear in their 2006 WQCP review and reiterated it in their Bay Delta Strategic Workplan in 2008. They have fallen behind the schedule they had set out in that Workplan, partially due to their legislatively-mandated Flow Criteria development. In the Flow Criteria document, the Board embraced X2 during the Fall, signaling that it will be strongly considered in their WQCP deliberations.

As we noted in our ANPR, EPA believes there continues to be substantial scientific basis for the use of the X2 approach to managing and protecting estuarine habitat in the Bay Delta. Although EPA's CWA responsibility includes, but is not limited to, protecting water quality for endangered species, we believe

that our review on the continued validity of the X2 approach is entirely consistent with the scientific arguments made by Interior in its most recent court filings. That is, there is presently not any significant disagreement between EPA and DOI on the science of X2.

Given that background, I am very interested in any new review process that DOI and the other lead BDCP agencies initiate. The X2 standard is a critical component of California's protection of the estuarine habitat designated use under the federal Clean Water Act and State Porter Cologne Act. It is important that any review you undertake in the context of BDCP (or in the context of the BO litigation) take that into account. Ideally, any scientific review of X2 under the ESA would be designed in a way that will be useful for the CWA/Porter Cologne regulatory process. At a minimum, we should carefully consider whether there are potential inconsistencies being created within the Federal family over the proper role of an X2-based estuarine habitat standard.

I look forward to discussing this with you and other federal colleagues in the near future. - Karen

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KAREN SCHWINN  
Associate Director  
Water Division  
U.S. EPA Region 9  
75 Hawthorne Street (Wtr-1)  
San Francisco, CA 94105  
415/972-3472  
415/947-3537 (fax)  
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